

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WILFREDO AVILES,

Petitioner,

-against-

MICHAEL CAPRA,

Respondent.

X

PROOF COPY OF AUE

13-CV-1153 (ARR)

NOT FOR PRINT OR
ELECTRONIC
PUBLICATION

OPINION & ORDER

X

ROSS, United States District Judge:

On September 26, 2014, the court denied the petition for a writ of habeas corpus filed by the pro se petitioner, Wilfredo Aviles, pursuant to 28 U.S.C. § 2254. Dkt. #16. On October 20, 2014, petitioner filed a motion to vacate the court's prior judgment pursuant to Federal Rule of Civil Procedure 60(b), which the court denied on November 13, 2014. Dkt. #19. On November 22, 2014, petitioner filed a second motion for Rule 60(b) relief, in which he reasserts various claims regarding the competence of his appellate counsel on direct appeal of his state court criminal conviction. Dkt. #20.

The court has already considered each of the arguments that petitioner raises in his new motion, and not one of them turns on "newly discovered evidence" or "mistakes or inadvertence," as petitioner so claims. For these reasons, as well as those additional reasons contained in the court's orders dated September 26, 2014, and November 13, 2014, petitioner's motion is denied.

Because petitioner has failed to make a “substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), the court declines to issue a certificate of appealability.

SO ORDERED.

/S/ Judge Allyne R. Ross

Allyne R. Ross
United States District Judge

Dated: December 5, 2014
Brooklyn, New York

Service List

Petitioner, Pro Se

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